



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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New York, New York 10007

September 27, 2022

BY ECF

The Honorable Edgardo Ramos
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Trevor Milton*, S1 21 Cr. 478 (ER)

Dear Judge Ramos:

The Government writes regarding summary charts that it intends to offer into evidence on Thursday during the testimony of a Special Agent from the United States Attorney's Office who will be testifying as a summary witness. The summary charts are marked as Government Exhibits 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1012, and 1013. The summary charts provide an efficient, helpful, and consistently approved presentation of voluminous evidence to the jury, and are therefore admissible.

The Second Circuit has "regularly affirmed" the use of summary charts "to draw the jurors' attention to particular evidence culled from a voluminous set of records." *United States v. Yousef*, 327 F.3d 56, 158 (2d Cir. 2003). In *United States v. Ho*, 984 F.3d 191, 209 (2d Cir. 2020), the Second Circuit affirmed the use of timeline charts similar to those that will be presented here. There, the defendant complained about summary charts that organized various types of evidence into timelines that were "created for the purpose of generating a narrative supporting the prosecution's theory of the case." *Id.* at 209. The Circuit, however, disagreed, citing a long line of precedent holding that such charts are useful to the jury and permitted by Rule 1006. *Id.* at 209-10.¹ Following these authorities, district courts regularly admit summary charts—indeed, the charts in this case have been modeled on charts previously found admissible by the Circuit and other courts in this District. *See, e.g., United States v. Skelos*, No. 15 Cr. 317 (KMW), Tr. 2252-57, 2262 (S.D.N.Y. 2015) (rejecting defense argument that timeline charts were "argument

¹ In affirming the charts' admission, the Circuit noted the importance of the usual limiting instruction "that the charts themselves did not constitute independent evidence and that it was the jury's duty to first determine that they accurately reflected the evidence on which they were based." *Ho*, 984 F.3d at 210. The Government consents to the same instruction here.

presented through an FBI agent” and “in effect summation,” and finding that “it is precisely the type of information that has been allowed to be used in charts”); *United States v. Parnas*, No. 19 Cr. 725 (JPO), 2022 WL 669869, at *7 (S.D.N.Y. Mar. 7, 2022) (rejecting defense argument that charts that “summarized communications among defendants” and “summarized financial evidence” were inadmissible because they were “misleading” and “took evidence out of context”); *United States v. Calk*, No. 19 Cr. 366 (LGS), at Tr. 2-5 (S.D.N.Y. June 22, 2021) (overruling defendant’s objection to timelines that put exhibits in chronological order); *United States v. Blakstad*, No. 19 Cr. 486 (ER), at Tr. 400-04 (S.D.N.Y. June 16, 2021) (admitting summary slides of trading data); *United States v. Cole*, No. 19 Cr. 869 (ER), at Tr. 2005-06 (S.D.N.Y. Oct. 22, 2021) (admitting summary slides offered by SEC witness over defense Rule 403 objection).

Here, the Government intends to offer three categories of summary charts: (1) Government Exhibits 1000, 1001, 1002, 1003, 1004 and 1012, which are charts summarizing information relating to the movement of Nikola’s stock price; (2) Government Exhibits 1005, 1006, 1007, and 1009, which are timelines that put evidence in chronological order; and (3) Government Exhibit 1013, which summarizes the movement of funds that the defendant obtained by selling stock. These charts are plainly relevant. Indeed, they present otherwise admissible evidence from the case and summarize evidence without argumentative headings.

The defendant has not yet given his position on whether he objects to the admission of these charts. But since revisions to the summary charts could be time consuming, the Government seeks an order on the admissibility of these charts on Wednesday so that the jury’s time is not wasted on Thursday.

Respectfully submitted,

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cc: Counsel of Record (by ECF)